

UNITED STATES DISTRICT COURT

**CENTRAL DISTRICT OF CALIFORNIA - SOUTHERN DIVISION**

HONORABLE CORMAC J. CARNEY, U.S. DISTRICT JUDGE

REPORTER'S TRANSCRIPT OF  
HEARING ON PRELIMINARY INJUNCTION  
WEDNESDAY, MAY 13, 2015  
4:36 P.M.  
SANTA ANA, CALIFORNIA

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SANTA ANA, CALIFORNIA; WEDNESDAY, MAY 13, 2015

4:36 P.M.

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THE COURTROOM DEPUTY: Calling Item No. 1,

04:36PM 5 SACV 15-585, Federal Trade Commission v. Denny Lake, et al.

Counsel, please state your appearances.

MR. COHEN: Good afternoon, Your Honor. Jonathan  
the Federal Trade Commission. With me is my  
, Miriam Lederer.

THE COURT: Good afternoon to both of you.

11 MR. BORCHARD: Good afternoon, Your Honor. Tom  
12 Borchard of Borchard & Callahan for the defendant, Mr. Lake,  
13 who is present. Also present from my office is Janelle Dease  
14 and Sabrina Narain.

THE COURT: Good afternoon.

16 MR. McNAMARA: Good afternoon, Your Honor. Tom  
17 McNamara. I'm your receiver. I'm here to answer questions,  
18 but I don't plan to participate.

MR. COHEN: How would the Court like to proceed?

04:36PM 20 THE COURT: Well, let me state what I understand is  
21 the parties' position, because I read the joint stipulation  
22 that there was going to be no further evidence presented this  
23 afternoon; correct?

MR. COHEN: Correct.

04:37PM 25 THE COURT: And that the parties are going to submit

1 on the evidence that was presented in the briefs as well as --  
2 on the Order to Show Cause why a preliminary injunction  
3 shouldn't be issued as well as all the papers in evidence that  
4 was submitted in connection with the TRO as well as the  
04:37PM 5 preliminary report by the receiver; correct?

6 MR. COHEN: Correct.

7 THE COURT: And so what I understood is now this was  
8 going to be more like argument from both sides based on that  
9 evidence; correct?

04:37PM 10 MR. COHEN: Yes, Your Honor.

11 THE COURT: All right. So I'm doing well so far.  
12 As I understand it from the papers, there's two issues that  
13 Mr. Lake is contesting and objecting. One is -- and they're  
14 defined very generally. One is, did he provide substantial  
04:38PM 15 assistance within the meaning of the law. And when I look at  
16 what was submitted to me and what's presented before me, I  
17 realize this is a preliminary injunction proceeding. It's not  
18 a final findings.

19 But based on what's been presented to me, my strong sense  
04:38PM 20 is that he did substantially assist and support the fraud. And  
21 particularly he facilitated payments. He responded and  
22 pacified consumers who were expressing concern about their  
23 money, and they thought the loan modification was already  
24 approved. He prepared consumers for court hearings. He  
04:38PM 25 shielded Pacios and Caldaronello from contact by consumers. He

1 alerted Pacios and Caldaronello and other defendants to  
2 problematic victims that needed to be pacified and addressed.  
3 And he never told consumers that their payments would not go to  
4 lenders. That's my initial thoughts. I wanted to be candid so  
04:39PM 5 Mr. Borchard knows where I'm coming from on that issue.

6 The second issue, as I see it, was whether the asset  
7 freeze as to Mr. Lake is fair, necessary and appropriate. And  
8 obviously I take issuing asset freezes and TROs and preliminary  
9 injunctions very seriously, because I realize if there's a  
04:39PM 10 violation of that TRO injunction, there are serious  
11 consequences that I have to back up with the law, which,  
12 including finding people in contempt and maybe putting them in  
13 custody. And I've done so. And I don't want to do that,  
14 especially in a civil proceeding. But the law is what the law  
04:40PM 15 is, and I take that very seriously.

16 But based on what the evidence has presented to me, I  
17 believe the asset freeze, it is broad, I will admit that. But  
18 I don't think it's overly broad in light of the estimated  
19 consumer loss, which is in the millions of dollars, which I  
04:40PM 20 gather from the receiver's report and from what was presented  
21 to me on the TRO. I believe that liability is joint and  
22 several under the federal statutes that the FTC is going under.  
23 I believe that the assets that have been seized not only of  
24 Mr. Lake but of the other defendants, unfortunately and  
04:40PM 25 tragically, it's just going to cover a fraction of the

1 estimated consumer loss.

2 I do recognize that Mr. Lake has to live and survive. And  
3 if he has other sources of income and makes sources of income  
4 so that he could repay credit, I fully intend to allow him to  
04:41PM 5 do that. But until he shows me that he has this other income  
6 stream that he could pay credit, I'm not at this point inclined  
7 to do that. But I can, at any time with the necessary showing,  
8 make the necessary modifications that are appropriate.

9 MR. COHEN: Your Honor, in light of those remarks,  
04:41PM 10 the FTC will reserve the balance, preserve its time and turn it  
11 over to the defendant.

12 THE COURT: Okay.

13 MR. BORCHARD: Your Honor, I appreciate your  
14 tentative thoughts on this. And I'll try to be as brief as  
04:42PM 15 possible, and I will try, as I'm sure the Court wants, that I  
16 don't recite or reiterate what's already in the papers before  
17 you.

18 I understand that the threshold for substantial assistance  
19 is low. I understand. And I could sit here all day and argue  
04:42PM 20 with Your Honor about how Mr. Lake did not substantially  
21 assist, given the fact that he was paid \$800 out of the 4300  
22 that was paid to do the work on these files. And unlike many  
23 of these loan modification cases that I've been involved in, I  
24 look very closely at the consumer arguments and complaints.

04:42PM 25 And the majority in this case seem to fall in light of those

1 related to "You took my payments" -- I'm Mr. Lake -- "You took  
2 my payments, and you told me they were going for trial mod  
3 payments."

4 Now I know the other defendants that are not here today  
04:43PM 5 stipulated. And if I was standing in their shoes and I was  
6 representing them, I would tell them immediately to stipulate  
7 and beg for mercy down the road. Because what they were doing  
8 in light of what the receiver and counsel has presented, it was  
9 egregious conduct.

04:43PM 10 What I don't see from the consumers here, and again, I  
11 understand substantial assistance, I don't see consumers  
12 saying, "Nothing was done on my file." I don't hear the  
13 situation where the \$800 went over to Mr. Lake's pocket and he  
14 ran off and he enjoyed dinners, Vegas. He and his team did the  
04:43PM 15 work on these files and, from what I understand, had a very  
16 high rate of success.

17 The Court can say to me, "Who cares if it's a violation of  
18 the MARS. It really doesn't matter." I guess the reason I  
19 raise those to Your Honor is that it does lead me into the  
04:44PM 20 breadth of the preliminary or the asset freeze.

21 THE COURT: Before you go there, though, let me  
22 respond, because I hear you loud and clear. And I recognize  
23 that this is a hearing on a preliminary injunction, not a final  
24 permanent injunction, not final on the merits. And I'm a big,  
04:44PM 25 big believer in due process, and I welcome and appreciate the

1 opportunity to have a full evidentiary record. But  
2 unfortunately -- or fortunately, however you want to look at  
3 it, the law requires that I make a decision on a preliminary  
4 basis, which I think, as you recognize, is a low standard.

04:44PM 5 And I also, when I look at the evidence that's before me,  
6 taking into context it's at a preliminary injunction stage, I  
7 do see Mr. Lake trying to do something favorable and beneficial  
8 for the consumers. I hear you. I recognize that. But I also,  
9 when I look at all the evidence before me on this preliminary  
04:45PM 10 injunction, an argument can be made that they were using  
11 Mr. Lake to provide some sort of legitimacy, some sort of cover  
12 to their fraud. They had to do something that was legitimate  
13 to get these consumers to give these payments.

14 And, you know, maybe arguably Mr. Lake had a very noble  
04:46PM 15 motivation or intent for doing what he did, but based on the  
16 evidence that was presented to me, he clearly, from what I saw  
17 without hearing his live testimony subject to  
18 cross-examination, he was aware that those guys were up to no  
19 good and were using him as part of a scheme to give at least a  
04:46PM 20 superficial face to the consumers that what we're doing is  
21 legitimate. Because from what I could gather, everything that  
22 they did was not legitimate.

23 So this scheme was going to crash and burn at the get-go  
24 if they didn't have someone like Mr. Lake that could give some  
04:46PM 25 superficial, I guess, impression to the consumers, to the

1 public that, no, we're doing legitimate work trying to help  
2 these consumers in distress from losing their homes. And, you  
3 know, this is wonderful work, what we're trying to do, but  
4 there was, from what I could gather, downright  
04:47PM 5 misrepresentation, despicable misrepresentations that were made  
6 by Pacios and Caldaronello, if I said his name.

7 MR. BORCHARD: Mr. Pacios.

8 THE COURT: Pacios. I should make a note of that.

9 So there's some of what you're saying I agree and I  
04:47PM 10 recognize, and I want to make that clear. But so you  
11 understand where I'm coming from, it was because of that  
12 legitimate, you know, beneficial work that Mr. Lake was doing,  
13 that the scheme was allowed to go on for what it did. Because  
14 I can't see anything that Mr. Pacios and Mr. Caldaronello were  
04:48PM 15 doing that was noble, altruistic, in the best interest of the  
16 borrowers.

17 MR. BORCHARD: I couldn't agree more. And I doubt  
18 the trips to Vegas were for the benefit of the homeowners. And  
19 for that, I believe those gentlemen deserve -- and apparently  
04:48PM 20 there's a contempt hearing coming up on one of them who's done  
21 it before. I appreciate what the Court's saying. Not only to  
22 me, but I appreciate what the Court is saying to Mr. Lake, so  
23 he does have an appreciation for what the Court said.

24 And speaking of evidence, I'm not asking for a  
04:48PM 25 continuance, and I'm not arguing any type of -- I hate to use

1 the word "sandbag," but I received a reply on Monday. And in  
2 the reply, I'm looking at probably three inches of documents  
3 that I've never seen before that was deemed new evidence. And  
4 I was going to start this out with a pitch to the Court that if  
04:49PM 5 your tentative decision was based upon all the new evidence, I  
6 was a little bit prejudiced.

7 And I'm not saying that they did this at the last minute  
8 to say, "I got you." I understand the receiver's been working  
9 diligently to pull information together and diligently present  
04:49PM 10 a report that apparently came this weekend. And I received a  
11 reply with just numerous amounts of documents that we haven't  
12 even gotten through, but the ones I have, I guess I'm just  
13 asking the Court if there's a significant amount of your  
14 tentative that's based on all of the new evidence that was  
04:49PM 15 submitted, I really haven't had a chance to process it. I  
16 really haven't had a chance to speak to Mr. Lake about it.

17 But if the Court is saying based upon the TRO and the  
18 initial documents that were submitted in our opposition that  
19 your tentative is still where it's going to be, then it's no  
04:49PM 20 harm, no foul to me.

21 THE COURT: Well, I do -- I'm not trying to curry  
22 your favor. I appreciate your inquiry. I don't think I could  
23 be candid and honest with you to say that the material that was  
24 submitted to me on reply wasn't significant. It was  
04:50PM 25 significant.

1           I also am frustrated by the whole TRO preliminary process.  
2           I could go on for hours telling you about my frustrations. And  
3           it's not because -- I hope you take my word at this -- it's not  
4           because I'm lazy -- it's not because I'm intellectually lazy,  
04:50PM 5           it's just such an expedited snapshot primarily on papers. And  
6           I don't say it gives short shrift to due process, but I'm a big  
7           due process person. I'm a big fan of trials and evidentiary  
8           hearings. And it's amazing to me how things change once you  
9           have live witnesses and you see the whole picture.

04:51PM 10           But the law provides understandably so that we have to  
11           have a mechanism for TROs and preliminary injunctions, and you,  
12           Judge, have to make this decision. And it jams you. It jams  
13           poor Mr. Lake because, you know, you're talking about some  
14           serious issues. And there's preliminary findings on these  
04:51PM 15           serious issues, and you're freezing his assets. It has drastic  
16           draconian implications to him, and he's not being given ample  
17           opportunity to respond and deal with it. And he's getting it  
18           from all directions, and he's being held accountable for  
19           conduct, statements, that others make. I get that. I share  
04:52PM 20           your frustration with it. But unfortunately, it is what it is.  
21           And the code, as you know, says I have to drop everything else  
22           that I'm doing.

23           And the other things that I'm doing, I don't want to bore  
24           you with, they're pretty significant. And a lot of them  
04:52PM 25           involve criminal matters, and a lot of them involve people

1 going away for a long period of time. And the law says I have  
2 to give this my top priority. I have to read this over the  
3 weekends. I have to read this late at night. You don't even  
4 have the opportunity to thoroughly discuss and go over these  
04:52PM 5 materials with your client before the law requires me to make  
6 this decision. So Mr. Borchard, you're singing to the choir  
7 that this process, I sure wish it could be better.

8 What I can tell you is, listen, it's a preliminary  
9 injunction. I'm here. After you go through all that material  
04:53PM 10 and you feel that, you know, okay, there's something I got to  
11 bring to the Court's attention, because I think we need to  
12 modify this injunction or we need to get him to vacate it, I  
13 would want, and I would expect you to come see me and present  
14 that. But I have to make a decision today, because the TRO  
04:53PM 15 expires tomorrow. I don't have the luxury of saying we can  
16 continue this unless you are willing to, you know, give an  
17 unlimited continuance of the TRO, which that doesn't make sense  
18 to me.

19 What makes sense to me is I just go forward, I issue the  
04:53PM 20 injunction. And then as you go through the materials, you  
21 think, "Okay, I've gone through this. There's a lot of  
22 problems with this, and you relied on this, Judge. I'd like to  
23 have you reconsider or bring a motion to amend the injunction  
24 or motion to vacate the preliminary injunction."

04:54PM 25 MR. BORCHARD: I appreciate that. And again, I want

1 to be very clear. I'm not saying that the counsel for the FTC  
2 or Mr. McNamara dropped these on me at the last moment. I  
3 don't think they were ready until the last moment. And I know  
4 the Court got them. I've reviewed them, and I'm looking at  
04:54PM 5 them, and I agree with you. There's many that cause me to  
6 pause and look at that -- it's going to require a substantial  
7 amount of time. Had those been presented at the -- for my  
8 opposition so that when I presented my opposition, had I had  
9 those ahead of time, I agree it's a great deal of material to  
04:54PM 10 process, but I can't even reply to them when I get them after  
11 my opposition has been filed. So I'm a little prejudiced, but  
12 I do understand what the Court is saying. And I just had to  
13 voice that.

14 THE COURT: I'm glad you voiced it. And I'm not  
04:55PM 15 sure my response addressed your concern as realizing -- I guess  
16 what I'm saying is we're all prejudiced by this process. But  
17 it is the process, and I take you -- and I agree with you, I  
18 don't find any fault on the FTC or on the receiver, because  
19 they have to move quickly. They don't have the luxury of  
04:55PM 20 moving like a Court of Appeal with deliberation and  
21 premeditation.

22 We got to -- we're a triage unit, and it's a fire drill.  
23 And from where Mr. Lake is sitting and from where you're  
24 standing, you know, in a way -- arguably you're the ones that  
04:55PM 25 are put at the biggest disadvantage by the expedited due

1 process. But I guess, you know, it sounds obnoxious. It is  
2 what it is. That is the process. That's the law.

3 MR. BORCHARD: Okay. So with that, and  
4 understanding that I guess my next step is to look at the  
04:56PM 5 breadth of the injunction.

6 THE COURT: Preliminary injunction.

7 MR. BORCHARD: And I think the Court accurately  
8 stated that as it pertains to the prohibited activities and the  
9 like, with the exception of the asset freeze, I'm not here to  
04:56PM 10 argue those that, no, let him keep doing processing. What I  
11 have indicated to Mr. Lake, based on the Court's comments, that  
12 him going forward, he does need to make a living. He --  
13 because at this point they have seized his bank account with  
14 44,000, another bank account with 15, and another small one, so  
04:56PM 15 1500. So he is depleted.

16 He is married with two children. His oldest son, 11, is  
17 autistic, is at home with, I believe insurance medical payments  
18 that go between 3- to \$4,000 a month. And he has no way at  
19 this point of paying those. His liquid asset's gone and can't  
04:57PM 20 use credit cards, can't borrow money. The only money -- and I  
21 appreciate it, even though I can report to the -- counsel for  
22 the FTC I have not yet been paid, but I appreciate the  
23 modification that the Court granted to allow at least me to get  
24 paid, and hopefully that will happen. But as it pertains to  
04:57PM 25 Mr. Lake with the freeze, as it pertains to the other

1 defendants, freeze them. Freeze them totally. But as it  
2 pertains to Mr. Lake, again, I'd ask that the Court balance the  
3 equities here for this preliminary and allow him and his family  
4 to at least breathe.

04:57PM 5 He will get a job. He has worked for other law firms and  
6 litigation support unrelated to loan modifications. He's out  
7 there looking. His wife would look for a job, but she needs to  
8 be at home with her son because of behavior issues. He's  
9 unable to attend school, so he is at home for those reasons.  
04:58PM 10 But the medication to balance him is very expensive, and they  
11 are paying that. So it's --

12 THE COURT: Can I pitch it this way to you. I hear  
13 you, and I'm sympathetic, but what I need you to do is to tee  
14 it up as precisely as you can. In other words, say, "Here is  
04:58PM 15 the exact money that he needs to pay for these essential things  
16 for his family and his son, daughter, wife." Give it to me  
17 specifically. Give me the amounts. Then if you can make a  
18 showing that the money that you want to use for this was not  
19 connected in any way to the \$800 per file that he received, if  
04:59PM 20 you can do that, even better. If you can't -- I'm not saying  
21 that that's going to be dispositive, but it's obviously going  
22 to be more of a concern for me if the FTC can readily trace  
23 that money to the \$800 he received per file.

24 But if you can trace it that it is separate and it's  
04:59PM 25 independent, that the money is desperately needed for the care

1 for his autistic child, for food, for survival, then I would  
2 want to know that, and I -- my limited dealings with the FTC on  
3 this, I've got the impression that they have a soul, they're  
4 not heartless. We don't have debtors' prison anymore in this  
05:00PM 5 country. They're not trying to incarcerate Mr. Lake. Their  
6 objective and their intent is to protect the consumers, and  
7 something is better than nothing for the consumer loss. And  
8 from what I can tell, there's going to be a consumer loss, and  
9 it's going to be a multimillion-dollar consumer loss, and  
05:00PM 10 there's not going to be enough money to cover that loss.

11 So I get why they want to freeze everything, and that's  
12 what I'm inclined to do at this point, but I'm here next week  
13 to receive a motion or an application for release of certain  
14 funds. If you can make that specific precise showing for me.

05:01PM 15 MR. BORCHARD: And I'll do that. And again, I guess  
16 it's an advisory opinion, but helping me direct where I'm going  
17 to tee this up for you, I'm not going to waste the Court's  
18 time, I'm not going to waste the FTC's time. If I'm having a  
19 difficult time tracing, I suspect their position -- and I don't  
05:01PM 20 want to argue for them to say if you can't trace it to an  
21 independent source, I'm going to assume it was from the source.  
22 And I'm not saying it is, but I'm anticipating an issue, but  
23 I'm still struggling with being able to tee it up with you.

24 I would present to the Court and to counsel for the FTC  
05:01PM 25 what credit he does have or his wife does have available that

1 if he does get a job, he'll be able to pay it back, but at  
2 least it could go on a credit card if I'm having a difficult  
3 time tracing the funds. I'm just looking for some source that  
4 is unrelated to monies that he has.

05:02PM 5 Because I understand the counsel for the FTC, when it came  
6 to my attorney's fees, we will submit a letter to counsel  
7 showing me where the funds -- if they were independent, not  
8 directly related, third source, arm's length, I understand  
9 that, recognize it.

05:02PM 10 If I have a BankAmericard or an American Express, I'm not  
11 sure what the credit card is that should prove that it's a  
12 third party. But if a third party is going to loan him money,  
13 which I don't know if that's the case right now, I would submit  
14 that as well. Because I know the need for financial survival  
05:02PM 15 is critical to date. It has been because of everything that  
16 has been seized.

17 So I guess I'm asking, because the Court made mention of  
18 that earlier, if I can't demonstrate his ability to repay the  
19 debt, I don't think it's fair to let him go into debt. He's  
05:02PM 20 not injured. He can work. He will get a job. I can't tell  
21 you when he will, but he is capable. And he will have to pay  
22 those loans back.

23 THE COURT: And what I -- what I'm saying is try to  
24 make it as concrete as an issue as you can for me, not an  
05:03PM 25 advisory, academic one. In other words, here is the person

1 who's willing to loan him money, and here is how he intends to  
2 pay it back. And he needs this money to pay for medication for  
3 his autistic child. To me, that is a compelling showing.

4 So I'm not trying to -- because I don't know what the  
05:03PM 5 facts are, Mr. Borchard, but let me give you an example from  
6 another case, okay?

7 MR. BORCHARD: Okay.

8 THE COURT: Another case, not this case. I had a  
9 similar asset freeze, and the individual wanted relief. But  
05:03PM 10 when it came down to it, he wanted the money to put in gas into  
11 his Mercedes. I don't even drive a Mercedes. He wanted the  
12 gas to -- I mean he wanted the money to pay for a gym  
13 membership. I don't have a gym membership. And to me, that  
14 was a no-brainer. I'm not making a modification for that.

05:04PM 15 You've thrown out one precise issue. He needs -- he needs  
16 money to pay for medication for his autistic child. That is a  
17 compelling reason. What I'd like to know is, well, is there  
18 any other sources of income to -- that is available from his  
19 wife or others to pay for that? No? Okay, tell me why not.  
05:04PM 20 Tell me, okay, here is the source that he's going to get some  
21 money. And he's going to try to repay the loan or whatever  
22 this way.

23 Again, I'm not trying to limit you to medication for his  
24 autistic child, but it all depends on what exactly you're  
05:05PM 25 asking the money for. But just this general -- he needs it to

1 live. It's not going to be good enough. I'm going to need  
2 specifics. And yes, I'm here to tell you I will entertain  
3 that. Will I grant it? I don't know until I see exactly how  
4 much you need, how you're going to get it, how you're going to  
5 repay it, what it's going to be used for. Then I can -- then I  
6 can respond.

7 MR. BORCHARD: I will provide that. And I  
8 appreciate that, and I can assure you I would not insult this  
9 Court with a request for a gym membership. I appreciate that.  
05:05PM 10 That would not be on my Income and Expense Declaration. And  
11 I'm surprised someone could put that on there.

12 THE COURT: That's why I was trying to be really  
13 careful. Not this case. Not this case. I wasn't trying to  
14 cast any dispersions to you or to Mr. Lake in the seriousness  
05:06PM 15 of what he needs the money for. I get it. And this is a civil  
16 case. He does have to live.

17 Do I want to willy-nilly say, "Well, I don't care about  
18 medication for his autistic child"? Of course not. I sure  
19 hope the FTC doesn't have that attitude either. And everything  
05:06PM 20 they've shown me is they don't. But until we have all the  
21 facts before us, you know, we can't give you a definitive  
22 answer.

23 MR. BORCHARD: Understood.

24 Mr. Lake --

05:06PM 25 I apologize --

1                   THE COURT: Would you like to consult with him?  
2                   MR. BORCHARD: Yes. Briefly. Thank you,  
3 Your Honor.

4                   **(Mr. Borchard and the defendant**

05:06PM 5                   **confer off the record.)**

6                   THE COURT: Mr. Cohen or Ms. Lederer, is there  
7 anything you'd like to say in response to what I've said?

8                   MR. COHEN: Yes, Your Honor.

9                   MR. BORCHARD: Thank you, Your Honor. I've had a  
05:07PM 10 chance to consult with him, and what I will do is I will  
11 prepare the necessary documentation. I'll provide it obviously  
12 to counsel, see if we can come to some type of agreement and  
13 present it to Your Honor. Hopefully we can. If not, we'll  
14 come in and hash it out before you, so Mr. Lake and his family  
05:08PM 15 have some way to at least say they'll get to either an ultimate  
16 resolution or trial in this matter for an evidentiary hearing.

17                   THE COURT: Good. And another case, not the one I  
18 was telling you about, there were many requests by one or more  
19 of the defendants for modification for living expenses, and the  
05:08PM 20 Government agency, I think it was the FTC. But regardless, the  
21 agency agreed to many of them, not all of them, but many of  
22 them. And if you can work it out and you both approve of it,  
23 the chances of me approving it are very, very high. If you  
24 can't work it out, that's what I'm here for. And even if the  
05:08PM 25 FTC opposes it, I will still seriously consider it.

1 MR. BORCHARD: I appreciate it. And we have had a  
2 very good working relationship. Counsel has been very  
3 communicative, open and engaging, so -- and worked very well  
4 with me in terms of an avenue to at least see that I could be  
5 paid, which I appreciate it. So I trust that will continue in  
6 the future. Thank you, Your Honor.

7 THE COURT: Good. Good.

8 Mr. Cohen.

9 MR. COHEN: Briefly, Your Honor.

05:09PM 10 | Certainly we agree with Mr. Borchard.

11 | THE COURT: Is it Borchard or --

12 MR. BORCHARD: Borchard.

13 MR. COHEN: We agree with Mr. Borchard that we've  
14 had a good relationship. And to the extent we will agree, we  
05:09PM 15 will agree. We appreciate the Court's recognition that the FTC  
16 does have a soul, but we want to make a couple points that I  
17 think are germane to how asset-freeze issues are evaluated down  
18 the line. And this is always challenging for us to say.

19 All of these cases present very difficult issues. I have  
05:10PM 20 no reason -- we have no reason to disbelieve that Mr. Lake --  
21 Defendant Lake does not have a serious need for the money. But  
22 it is important to remember as well that the victims also have  
23 a serious need for that money and that there are other victims,  
24 many victims, hundreds of victims. And whether it's an  
05:10PM 25 autistic child or, you know, other types of medical expenses,

1       they're all in a similar position.

2           So there is ultimately not going to be a perfect ending to  
3       this no matter what. And that money that is currently frozen,  
4       we believe belongs to them. And no matter how dire the need  
05:10PM 5      may be from Mr. Lake's standpoint, ultimately if it's their  
6       money, it should be returned to them.

7           The next point --

8           THE COURT: Before you go to that --

9           MR. COHEN: Yes.

05:10PM 10          THE COURT: -- I hear you, and I also recognize that  
11       many of the consumers that you're representing, they have  
12       tragic circumstances themselves, and many of them have lost  
13       their home or are about to lose their home. So I get that too.  
14       But again, Mr. Borchard was envisioning -- I don't know if  
05:11PM 15      these are going to be the facts, but is envisioning a situation  
16       where there is some source of giving new money. And Mr. Lake  
17       has the ability to repay that new money, or it's going to be a  
18       gift by a friend or someone, new money.

19           And there is a risk that this lender or giftor isn't going  
05:11PM 20      to get paid back, but is willing to take that risk for whatever  
21       reason. And this money is going to be used for a noble,  
22       essential purpose. To me, that is a lot more persuasive than  
23       "I want to use money that was clearly traceable to the \$800 per  
24       file I received. And I want to use that money to pay for gas  
05:12PM 25       in my car or to pay a mortgage payment." That's not nearly as

1 compelling -- as convincing as the former situation.

2 And until we know exactly what the facts are, I guess all  
3 I'm asking you is to keep an open mind, because I understand  
4 what the law is, and I understand that there's been victims  
5 here, the consumers, and that's their money, but I'm not going  
6 to be able to ever make them whole from what I'm hearing.

7 They're going to suffer.

8 Does that mean I'm oblivious to their suffering? No.  
9 Does that mean I shouldn't always try to minimize their  
05:12PM 10 suffering? I should always try to do that. And I know that's  
11 what your job and your mission is, but what the situation  
12 Mr. Borchard is suggesting is this is new money, and at this  
13 point of the proceeding where it's not a final judgment, it's a  
14 preliminary injunction, you know, there's no absolutes.  
05:13PM 15 There's no bright lines. This is going to have to be a  
16 case-by-case situation. And I agree with you. You said it  
17 very well. There's no winners here. Everybody's losers. It's  
18 how big of a loser are you going to be.

19 MR. COHEN: Yes, Your Honor. And with respect to  
05:13PM 20 new money, that's very significant. I think it's at least  
21 likely that if there is a sufficient showing on behalf of the  
22 defendant, that it is, in fact, new money, that we will be able  
23 to reach an agreement without even having to bring it to the  
24 Court's attention. We were able to do that with respect to the  
05:14PM 25 prior modification to the TRO to allow payment for Mr. --

1       Defendant Lake's defense. So we're certainly open to that.

2           There is an issue, however, with tracing as being distinct  
3       from new money. Now tracing is one way which money could be  
4       established as being new money, but tracing sometimes presents  
05:14PM 5       other problems. The law does not require that only assets be  
6       frozen that are specifically traceable to the \$800 per file  
7       that Mr. Lake received.

8           As the Court observed earlier, there is joint and several  
9       liability. Really the key is that it's new money. So if  
05:15PM 10       Mr. Lake goes out and obtains additional income, whether that  
11       is from a loan or whether that is from new employment or just  
12       another source, that is very likely to be unproblematic as long  
13       as we're able to confirm it. However, if the money is, in  
14       effect, old money, tracing presents a number of problems. And  
05:15PM 15       we wanted to make that clear, that ultimately it may have to be  
16       brought before the Court to brief specifically the issue of the  
17       tracing.

18           But we don't believe that it's the case that it is  
19       necessary for the FTC to establish in order to maintain the  
05:15PM 20       asset freeze that a particular dollar and a particular frozen  
21       bank account was a dollar that was linked to an \$800 payment.

22           THE COURT: I understand.

23           MR. COHEN: Nothing further.

24           THE COURT: Okay. Well then what I'm going to do is  
05:15PM 25       I'm going to just modify the proposed preliminary injunction

1 for Mr. Lake as well as the corporate entities by just deleting  
2 the FTCs, and then I'm just going to go ahead and sign them and  
3 issue them this evening.

4 MR. BORCHARD: Your Honor, can I inquire? On  
05:16PM 5 Page 15 of 25 of the Proposed Order, just so, again, when I'm  
6 explaining it to my client, I want to make sure we're not going  
7 to trip on our shoelaces. And it's Subsection (f).

8 THE COURT: And your question, I am anticipating is,  
9 is this new customers unrelated to the mortgage business, or is  
05:16PM 10 this customers from the mortgage business that Mr. Lake may get  
11 his hands on somehow by having checks or money orders?

12 MR. BORCHARD: Correct. And my note here is future  
13 checks from consumers, clients and customers. If they were --  
14 obviously if it's within the context of the activities  
05:17PM 15 described in their Complaint, then it's clear to me. But if  
16 it's future checks he may receive from a third party unrelated  
17 and new money, again, that that is not what's anticipated in  
18 Subsection (f).

19 THE COURT: That's my intent, and that's my  
05:17PM 20 understanding. But with that said, I strongly, strongly  
21 encourage if this is new money, before he cashes the check,  
22 before he cashes the money order, consult with the FTC, because  
23 then it doesn't look suspicious. It doesn't look nefarious.  
24 Because if they find out or if the receiver finds out there's  
05:18PM 25 checks Mr. Lake is getting his hands on and he's cashing them,

1 the impression with everything is that it's money from the old  
2 customers.

3 So transparency is important. And like it or not, we're  
4 in this stage now where he has very little financial privacy.

05:18PM 5 And that's a tough pill to swallow, I get it, but that's where  
6 we're at right now. The bottom line, he doesn't have very much  
7 financial privacy. So I would strongly encourage him to let  
8 you know, and then you let the FTC and the receiver know about  
9 any new money sources.

05:18PM 10 MR. BORCHARD: I'll do that. Thank you, Your Honor.

11 THE COURT: Okay.

12 So that is my intent. I will delete the caption of the  
13 FTC from the orders and delete the word "proposed," and then I  
14 was going to sign both orders.

05:18PM 15 MR. COHEN: Thank you, Your Honor.

16 MR. BORCHARD: Thank you, Your Honor.

17 THE COURT: Thank you.

18 THE COURTROOM DEPUTY: All rise.

19 **(Proceedings concluded at 5:18 p.m.)**

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